MULTIMEDIA UNIVERSITY

STUDENT ID NO

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# MULTIMEDIA UNIVERSITY

# FINAL EXAMINATION

**TRIMESTER 1, 2022/2023 (TERM 1D 2210)**

## ULT 2612 – LAW OF TORTS I

( All sections / Groups )

**15 FEBRUARY 2023**
Reading Time: 9.00 am -9.15 am
(15 Minutes)
Answering Time: 9.15 am -12.15 pm
(3 Hours)

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**INSTRUCTIONS TO STUDENTS**

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 3 pages with **PART A** and **PART B**. Students have to answer **TWO (2) questions only** from **PART A** and answer **all questions** from **PART B**.

3. All questions carry equal marks and the distribution of the marks for each question is given.

4. Please write all your answers in the Answer Booklet provided.

**PART A**
**ANSWER TWO (2) QUESTIONS ONLY.**
**QUESTION 1**

a) Physical threat may somehow affect a person's mental health. Thus, a person is protected under the law against any threat of physical violence in order to maintain his mental well-being.

In the light of the above statement, discuss how the law protects a mental well-being of a person from the perspective of tort of trespass to person?

(15 marks)

b) The right to immediate possession refers to the right to continue to have possession or to take possession if the person does not have possession at that time.

Distinguish the right to immediate possession from actual possession in respect of a land. Explain when the tenant and the purchaser shall have the right to immediate possession in tenancy and sale and purchase of land respectively.

(10 marks)
**(Total: 25 marks)**

**QUESTION 2**

a) In order to take an action in conversion, the plaintiff must prove that he has possession in fact or immediate right of possession. Describe the categories of persons who may have possession in fact or immediate right of possession in respect of conversion.

(15 marks)

b) Conversion and detinue are redundant in some aspects. Based on that reason, under English Law, detinue has been abolished and absorbed in the tort of conversion. Thus, most cases of interference with goods may fall under conversion.

Based on the above, explain the current position of detinue under Malaysian law in light of decided cases and indicate your opinion concerning its future in Malaysia.

(10 marks)
**(Total: 25 marks)**

**QUESTION 3**

'A doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that medical act'.

Per Mc Nair J in *Bolam v Friern Hospital Management Committee [1957] 2 All ER 118*

**Continued...**

"The *Rogers v Whitaker* test would be a more appropriate and a viable test of this millennium... the phrase "Doctor knows best" should now be followed by the qualifying words "if he acts reasonably and logically and gets his facts right".

Per Siti Norma J in *Foo Fio Na v Dr Soo Fook Mun [2007] 1 MLJ 593*

Based on the above judgements, discuss the evolution of 'Doctor Knows Best' rule in determining the liability of medical practitioners in Malaysia with the aid of decided cases.

**(Total: 25 marks)**

**PART B**
**ANSWER ALL QUESTIONS**
**QUESTION 4**

Cole and Dylan are twins. To celebrate their birthday, both of them decided to eat lunch together at their favourite fast-food restaurant "Chill & Chill" located at the North Valley mall. After they ordered their food, Dylan went to get some drinks while Cole went to the seating area to choose a table for them to sit at. He finally chose to sit in a secluded section of the restaurant as he wanted to avoid the crowd. Unbeknownst to him, there was a faded sign in that section stating that the fan was under maintenance. As Cole was enjoying his food, a rusty old fan suddenly dropped from the ceiling and instantly broke two of Cole's right fingers. Blood splattered across his face and Cole immediately cried in pain. Dylan, who was about to approach the table was horrified by the incident. His face turned white, and he immediately fainted. After the incident, Dylan suffered from post-traumatic stress disorder (PTSD). The people in the food court were frantic. Alia recorded Cole's condition and sent it to Anne, her sister. After viewing the recording, Anne claimed to have feverish nightmares.

Cole was quickly rushed to a nearby hospital and was treated by Dr Martin. Dr Martin contended that Cole's fingers were fractured and needed to undergo surgery. There is a 50% risk that Cole's finger may suffer from a serious infection due to the surgery however, this information was not communicated to Cole. Relying on Dr Martin's advice, Cole underwent surgery. A few days after the surgery, Cole started to develop puss and red swelling on his two affected fingers. He communicated his concern to Dr Martin, nevertheless, Dr Martin assured Cole that he should not be worried as it is normal to develop some swelling post-surgery. Three weeks after the surgery, the puss and swelling became worse, and his right fingers eventually have to be amputated. Dr Martin contended that the infection was not necessarily caused by the surgery. However, Cole consulted a second opinion from a specialist, Dr Hari who stated that the surgery was the main contributory factor to the infection.

Assess the right of action that may be initiated by Cole, Dylan and Anne.

**(Total: 25 marks)**

**Continued...**

## QUESTION 5

Mr. Dip is a popular radio announcer for Caribbean FM. In 2019, he fell in love with Heart, an aspiring Youtuber. They got married a few months after meeting each other. Eventually, the marriage turned sour, and they are now on a brink of divorce. Somewhere in January 2022, Heart uploaded a video on "Marital Problems" on her YouTube channel. In the video, she invited Maria, a marriage counsellor to share her experiences with couples who have marital problems and the ways to overcome them. At the end of the video, Heart suddenly started sobbing and stated that "Marriage is hard especially when a drug addict is involved." After the video was uploaded, it reached about 1 million views. Mr. Dip started to receive backlash from the public and he had been issued a notice from Caribbean FM to remove him temporarily from being a radio announcer.

Somewhere in February 2022, the residents of 'The Bukit Kiara Apartment' held a yearly potluck party to connect with the neighbours. On the day of the party, Heart, who is one of the residents of Bukit Kiara attended the party with a homemade spaghetti dish. However, whenever she wanted to chat with her neighbours, they would either avoid her or quickly excuse themselves. The event organiser even asked her to leave the party. It was later found out that Ki Choh had spread the word to other neighbours, claiming that 'Bukit Kiara's YouTuber' caught Covid-19 during her stay at the hospital, two days before the potluck party. Heart was indeed admitted to the hospital two days before the party; however, it was due to asthma.

After she was asked to leave, Heart went back to her parent's house for dinner. While they were discussing over dinner, Heart's father, Dato' Lee who is a politician from MAC political party expressed MAC's concern to take action against one Timmy for making a statement that MAC is corrupted.

Mr. Dip, Heart and a representative from MAC political party went to see you, a prominent lawyer to seek your advice. Assess their rights in accordance with the law of defamation together with any possible defence.

**(Total: 25 marks)**

**End of page**